

January 12, 2006

The Board of Assessors
Town of Tisbury
P.O. Box 2147
Vineyard Haven, MA 02568-2147

Re: Taxation of Business Trust
Our File No. 2004-406

Dear Board Members:

We acknowledge receipt of your letter regarding the taxation of personal property of business trusts. You forwarded to us copies of four Declarations of Trust for (1) the H.N. Hinckley & Sons Business Trust, (2) the Island Food Products Trust, (3) the Black Dog Tavern Business Trust, and (4) the John G. Early Trust. You stated that each of these business trusts also is listed as a corporation in the Massachusetts Corporations Book. You asked if that made them "separate entities requiring each corporation also [to] be taxed as a Business Trust" and, in general, how you should treat a business trust for local property tax purposes.

We assume that the four Declarations of Trust were filed with the clerk of the Town of Tisbury as required by G.L. c. 182, §2. According to these documents, each of these trusts is a Massachusetts Business Trust ("MBT"), which is an unincorporated business organization cast in the form of a trust. It also appears that each MBT is a holding company formed to hold the shares of its operating subsidiary.¹ This is a typical business structure that sometimes provides corporate excise tax advantages because business trusts are taxed at a lower rate than corporations.

MBTs are subject to local property tax on their tangible personal property and are required to file State Tax Form 2 listing all taxable personal property assets of the organization for each fiscal year. *See* G.L. c. 59, §2; c. 59, § 18, cl. first; c. 59, §29. The tangible personal property subject to tax includes, but is not limited to, business equipment, office machinery, inventory, furniture and fixtures. Corporations also are subject to local property tax on their tangible personal property and are required to file State Tax Form 2 listing all taxable personal property assets of the organization for each fiscal year. *Id.* However, depending on the business of the corporation, varying degrees of exemptions would apply.

Personal property exemptions are generally governed by G.L. c. 59, §5, which exempts specific property from the tax in its several clauses. No personal property tax exemptions apply to business trusts. Clause 16 of Section 5 of Chapter 59 provides partial personal property tax

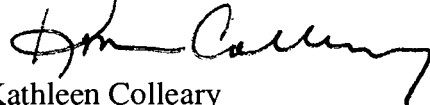
¹ For example, Article III of the John G. Early Trust instrument provides that "[t]he purposes of the Trust are to buy, sell, invest in, exchange and otherwise deal with, for its own account, equity and debt securities of John G. Early Contractor and Builder, Inc., a Massachusetts corporation, and to undertake any and all activities incidental to the foregoing" The other trust instruments have similar provisions about the trusts' purposes.

exemptions for a corporation, and the property subject to exemption depends on whether it is a business corporation, manufacturing corporation, financial institution, utility or insurance company. According to the information you have submitted, all of the subsidiary operating corporations appear to be Massachusetts business corporations. These types of corporations are not subject to tax on personal property such as cash, inventory and fixed assets. They are taxable on their machinery used in the conduct of their businesses. However, machinery that is stock in trade or used directly in connection with dry cleaning, laundering, refrigeration, air conditioning, purchasing, selling, accounting or administration is excluded from the definition of machinery used in the conduct of business and is specifically exempt. *See G.L. c. 59, §5, clause sixteenth.*

As a general matter, all personal property within the commonwealth is taxed to the owner in the town where it is situated on January 1st unless it is otherwise exempt. G.L. c. 59, §11. Ordinarily, only the shares of the original operating corporations would be transferred to the MBTs when they are first established. The personal property assets would remain with the subsidiary operating corporations. If this is the case, and the corporations are the owners of the equipment and machinery listed on the documents you forwarded to us, they are the entities against which the taxes should be assessed and the exemptions applied. The MBTs should be assessed separately for whatever taxable personal property they own. However, holding companies typically tend to have little in the way of personal property items.

We hope that this information is helpful. Please feel free to contact us again if you have any further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written over the typed name.

Kathleen Colleary
Chief, Bureau of Municipal Finance Law

KC/mcm